IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 22950 of 2003 AND

C.C.NO.515 OF 2004

WRIT PETITION NO : 22950 of 2003

Between:

Gems High School, Oriental & English Medium, Doodh Bowli,

Hyderabad, rep: by its Correspondent, Smt K.Rafath Sultana

..... PETITIONER

AND

1 The Commissioner & Director of School Education, Government of A.P.,

Hyderabad.
2 The District Educational Officer, Hyderabad Dist.
3 The Deputy Educational Officer, Bahadurpura, Hyderabad.
4 T. Swaroopa Rani, W/o. T. Narasimha Chari, R/o. 23-2-553, Haribowli X

Roads, Hyderabad.
5 Uma Rani, W/o. J. Gopinath Rao, R/o. 23-5-770, Laldarwaza X Roads, Hyderabad.
6 D. Swaroopa Rani, W/o. Narasimha Reddy, R/o. Flat No. 102, M.J.R.

Apartments, Malakpeta, Hyderabad.

(RR 4 to 6 are impleaded as per
Court Order dated 23.01.2004 in WPMP No.1666/2004).

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction, especially one in the nature of Writ of Mandamus, declaring the proceedings of the District Educational Officer, Hyderabad Dist., Hyderabad, in RC.No.1848/EII/2003 dated 22-9-2003 as being arbitrary, illegal, unconstitutional, null and void and violative of principles of natural justice insofar as it relates to shifting of the posts from the petitioner school and consequently direct the respondents to accord permission to the petitioner school to fill up all the five aided posts.

Counsel for the Petitioner: MR.Y.VENKAT SASTRY

Counsel for the Respondent Nos.1 to 3: GP FOR SCHOOL EDUCATION

Counsel for the Respondent Nos.4 to 6: M.SUDHEER KUMAR

AND

CONTEMPT CASE NO : 515 of 2004

Contempt Case U/s. 10 to 12 of Contempt of Courts Act to punish the Respondents herein for violating, disobeying the Order of the High Court dated 31-10-2003 in WPMP No.28787 OF 2003 in WP No.22950 of 2003.

Between:

Gems High School (Recognised by Govt of A.P.,) Rep by Smt. K. Refath Sultana, Oriental & English Medium, Doodh Bowli, Hyderabad

..... PETITIONER

AND

1 Sri Man Mohan Singh
Commissioner & Director of School Education, Govt of A.P.,

Hyderabad.

2 Sri Jangannadha Reddy,
District Educational Officer, Hyderabad District, Hyderabad.

3 Sri Ahmed Basheeruddin Farooqi,

Deputy Educational Officer,
Bahadurpura, Hyderabad,.

.....RESPONDENTS

Counsel for the Petitioner:MR.Y.VENKAT SASTRY

Counsel for the Respondents: GP FOR SCHOOL EDUCATION

The Court made the following :

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COMMON ORDER:

Heard Sri Y.Venkata Sastri, the learned Counsel for the petitioner and the learned Government Pleader for School Education and M.Sudhir Kumar, the learned Counsel appearing on behalf of the contesting respondents. Since both the proceedings are connected with each other they are being taken up together for disposal.

2. The petitioner herein, which is a school, filed this Writ Petition, inter alia, seeking a Writ of Mandamus declaring the proceedings of the 2nd respondent herein dated 22-09-2003 as bad and illegal.

3. The case of the petitioner in brief is that it had started in the year 1967 and the same was recognized by the Government. The petitioner has five aided posts viz., one School Assistant, two S.G.Teachers, one Arabic Pandit and one Telugu pandit and there are sixteen unaided posts. However, two aided posts are remaining unfilled, as permission is not granted in spite of seeking. The respondent Nos.4 to 6, who have been impleaded subsequently at their own instance as per Court Order dated 23-01-2004, are remained unauthorisedly absent from 22-09-2003. This was

followed by certain issuance of memos in regard to dereliction of duties and now ultimately it has laid to the passing of impugned orders dated 22-09-2003 by second respondent, whereunder the said three employees along with the posts were transferred to other institution. Whereas, petitioner submits that the services of the respondent No.4 were terminated from 09-10-2003 as per the proceeding dated 10-10-2003 and that of the respondent No.6 from 13-10-2003. Accordingly, the same was informed to the second respondent on 16-10-2003. The impugned proceedings are, inter alia, challenged on the ground that the entire action is wholly unsustainable and more so without any prior notice or enquiry and therefore the same is liable to be set aside.

4. At the time of admission this Court granted interim suspension of the impugned proceedings as per the orders in W.P.M.P.No.28787 of 2003, dated 31-10-2003. Since the said interim orders were not complied with, the petitioner had filed the contempt case in C.C.No.515 of 2004 and the same was admitted on 05-07-2004.

5. Contesting the petitioner's claim the case of the respondents was that the posts are not shifted, but only the said teachers were deputed to other school and there is no violation of any orders. It was further contended that prior to the impugned proceedings the respondents have issued a notice on 05-09-2003 and since no explanation forthcoming the impugned orders had to be passed. Further, it was only due to the action on the part of the petitioner-management in harassing the teachers by issuance of memos charge-memos etc., the said action had to be taken recourse to. Therefore, the main order having been issued on 05-09-2003, which had remained unchallenged, the impugned order is only a consequential one and thus this Court cannot give any relief to the petitioner. Hence, the very writ petition itself is not maintainable.

6. The contesting respondents subsequent to their impleading filed their counter on the self-same lines sustaining the impugned action on the ground that the petitioner for no reason harassing the teachers including respondent Nos.4 to 6.

7. Having heard the counsel on either side and on perusal of the material, the question which has to consider in this Writ Petition is, as to whether the impugned orders are sustainable on law and on facts. There is no dispute to the fact that the petitioner has been running the school under a due recognition and also with the provision of the aid by the Government. Now, the entire allegations around the fact

that the petitioner had been harassing the employees. Whereas, the case of the respondents, including respondent Nos.4 to 6, is that on behalf of the management several memos are being issued without any valid reason or justification and in fact cameras are being used in the room, where the employee ladies are working, which is totally unpardonable. According to the respondents they had issued proceedings on 05-09-2003 calling upon the petitioner to file an explanation, whereunder the petitioner has to file reply within 15 days. The impugned orders were passed on 22-09-2003.

8. The case of the petitioner is that even before the petitioner could possibly file any explanation, the respondents had taken recourse to such action, whereby the said posts were sought to be shifted to other institution without any prior notice or enquiry.

9. Admittedly, the respondents have decided to shift the teachers to other institution only because of the allegations made against the petitioner. Therefore, it cannot be said that the impugned action is one without any imputation. Once an allegation is sought to be made for any action, it calls for an enquiry and also prior opportunity to the party, who being affected. Admittedly, in this case no enquiry was conducted with proper opportunity to the petitioner. Though a notice was alleged to have been given on 05-09-2003, within twenty days thereafter the impugned orders were passed without even waiting for the explanation of the petitioner. In view of the same, it is not necessary to go into the various other contentions, as urged on behalf of the petitioner as well as respondents herein, it would suffice in the interest of justice if proper orders are passed after providing an opportunity to the petitioner to file its explanation and after conducting an enquiry. 10. In the circumstances, the Writ Petition is allowed. The impugned order dated 22-09-2003 is set aside. The petitioner shall file an explanation within two weeks from today and on receipt of which the respondent No.2 shall pass fresh orders on merits and in accordance with law after giving a personal hearing and also conducting an enquiry.

11. Having regard to the orders passed in the main Writ petition, there is no necessity to go into the allegations in the contempt case. The contempt case is, accordingly, dismissed. No costs in both the cases.

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B.PRAKASH RAO, J.

Dated 13-12-2004.

skmr

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice, on this Monday, the Thirteenth Day of December Two Thousand and Four.

..... REGISTRAR

To

1 The Commissioner & Director of School Education, Government of A.P.,

Hyderabad.
2 The District Educational Officer, Hyderabad Dist.
3 The Deputy Educational Officer, Bahadurpura, Hyderabad.
4. 2CCs to G.P. for School Education, High Court Buildings,

Hyderabad, (OUT).

5. 2CD copies.